



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2004

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Street
Dallas, Texas 75201

OR2004-0402

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194361.

The City of Dallas (the "city") received a request for (1) information generated by consulting firms hired by the city concerning wage information or data pertaining to Comcast Corporation ("Comcast") or AT&T Broadband ("AT&T") since January 1, 2001 and (2) any information concerning contractors and subcontractors used by Comcast or AT&T since January 1, 2001, particularly the compliance by contractors and subcontractors with appropriate state and local laws regarding bonding and insurance requirements. You state that some responsive information will be released to the requestor. As you did not submit any information regarding item number one of the request and any information regarding the compliance of contractors and subcontractors to state and local bonding and insurance requirements as requested in item number two of the request for our review, nor do you indicate that you seek to withhold this information, we assume you have released this information, to the extent it exists, to the requestor. If you have not released this information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302. You claim that the submitted information implicates the interests of a third party. You inform this office and provide documentation showing that you have notified the interested third party, whose proprietary interests may be implicated by the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body

to rely on interested third party to raise and explain applicability of exception in Public Information Act (the "Act") in certain circumstances). We received arguments from representatives for Comcast.¹ We have reviewed the information you submitted and considered the submitted third party arguments. We have also received and considered the requestor's comments. See Gov't Code § 552.304.

First, Comcast asserts that the requested information is excepted from disclosure under section 552.104 of the Government Code. We note, however, that section 552.104 only protects the interests of governmental bodies, not those of private parties such as Comcast. See Open Records Decision Nos. 592 at 8 (1991) (governmental body may waive section 552.104). Section 552.104 excepts information from disclosure if a governmental body demonstrates that the release of the information would cause potential specific harm to the governmental body's interests in a particular competitive situation. See Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). The city has not argued that the release of submitted information would harm the city's interests in a particular competitive situation. Therefore, the submitted information may not be withheld pursuant to section 552.104.

Comcast also asserts section 552.110 of the Government Code. Section 552.110(b) of the Government Code excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). An entity will not meet its burden under section 552.110(b) by a mere conclusory assertion of a possibility of commercial harm. Cf. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C.Cir. 1974). An interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing that substantial competitive injury would likely result from disclosure of requested information. See Open Records Decision No. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure).

Upon review, we find that Comcast has adequately demonstrated that the pricing information contained in their agreements with contractors and subcontractors would cause them substantial competitive harm for purposes of section 552.110(b). Consequently, the pricing

¹ Comcast notes that it acquired AT&T on November 18, 2002 and so their response pertains to both Comcast and AT&T. We will hereinafter refer to both only as "Comcast."

information we have marked is excepted from disclosure under section 552.110(b). The remaining information must be released to the requestor.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

² Although Comcast also objects to the release of the compilations generated by consulting firms for the city regarding Comcast's wage information, the city has not requested that this information be excepted from disclosure and has not submitted the information. Because the city has not requested that the wage information be excepted from disclosure, we do not address item number one of the request in this ruling.

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 194361

Enc. Submitted documents

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